

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ELAINE L. CHAO, Secretary	)	
of Labor, United States Department	)	
of Labor,	)	<b>CIVIL ACTION NO. 04-11310 NG</b>
Plaintiff	)	
	)	
v.	)	
	)	
LE INC, LE & PHAM INC.,	)	
LE CAFE INC., LE & T INC.,	)	
PHO PASTEUR INC., and	)	
DUYEN LE,	)	
Defendants	)	

**THE DEFENDANTS' ANSWER**

Now come the defendants in the above-referenced action who answer the **Complaint** of Elaine L. Chao, Secretary of Labor, United States Department of Labor, as follows:

1. The defendants deny that jurisdiction has been conferred upon the Court by 29 U.S.C. § 217, or 28 U.S.C. § 1345 to adjudicate the claims presented.
2. The defendants admit the facts alleged in ¶ 2.
3. The defendants admit the facts alleged in ¶ 3.
4. The defendants admit the facts alleged in ¶ 4.
5. The defendants admit the facts alleged in ¶ 5.
6. The defendants admit the facts alleged in ¶ 6.
7. The defendants deny the facts alleged in ¶ 7 and call upon the plaintiff to prove its allegations.

8. To the extent that ¶ 8 states a legal conclusion, no response is required. To the extent which the paragraph sets forth factual allegations, the defendants deny the facts alleged in ¶ 8 and call upon the plaintiff to prove its allegations.

9. To the extent that ¶ 9 states a legal conclusion, no response is required. To the extent which the paragraph sets forth factual allegations, the defendants deny the facts alleged in ¶ 9 and call upon the plaintiff to prove its allegations.

10. To the extent that ¶ 10 states a legal conclusion, no response is required. To the extent which the paragraph sets forth factual allegations, the defendants deny the facts alleged in ¶ 10 and call upon the plaintiff to prove its allegations.

11. To the extent that ¶ 11 states a legal conclusion, no response is required. To the extent which the paragraph sets forth factual allegations, the defendants deny the facts alleged in ¶ 11 and call upon the plaintiff to prove its allegations.

12. To the extent that ¶ 12 states a legal conclusion, no response is required. To the extent which the paragraph sets forth factual allegations, the defendants deny the facts alleged in ¶ 12 and call upon the plaintiff to prove its allegations.

13. To the extent that ¶ 13 states a legal conclusion, no response is required. To the extent which the paragraph sets forth factual allegations, the defendants deny the facts alleged in ¶ 13 and call upon the plaintiff to prove its allegations.

### **First Affirmative Defense**

The complaint fails to state a claim upon which relief may be granted.

### **Second Affirmative Defense**

The plaintiff has an adequate remedy at law.

**Third Affirmative Defense**

The plaintiff's claims are barred because it has failed to satisfy the necessary predicates for the Court to exercise its jurisdiction over the claims.

**Fourth Affirmative Defense**

The plaintiff's claims are barred because the defendants are not engaged in commerce or in the production of goods for commerce.

**Fifth Affirmative Defense**

The defendants operate their businesses solely intrastate.

**Sixth Affirmative Defense**

The plaintiff's claims must fail because the defendants are the ultimate consumers of any goods that have been moved in or produced for commerce.

**Seventh Affirmative Defense**

The plaintiff's claims must fail because the defendants are not an enterprise within the meaning of 29 U.S.C. § 203(s)(1).

**Eighth Affirmative Defense**

The plaintiff's claims must fail because the plaintiff seeks to improperly enlarge the class of employers subject to the provisions of 29 U.S.C. § 201-*et seq.*

**Ninth Affirmative Defense**

Because none of the employees of the defendants would have been subject to 29 U.S.C. § 201-*et seq.* before the 1961 amendments to 29 U.S.C. § 201-*et seq.*, none of the defendants' employees are covered, under those amendments, as fellow employees of previously-covered employees.

**Tenth Affirmative Defense**

The plaintiff's claims must fail because the phrase "handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce by a any person" is intended to apply only to employees who engaged in such activities before those goods went into interstate commerce.

**Eleventh Affirmative Defense**

At all times relevant, the defendants, in good faith, relied upon the statutory exclusion of restaurant employees, as provided for under M.G.L. 151, § 1A(14).

**Twelfth Affirmative Defense**

At all times relevant, the defendants have paid their employees the minimum wage provided for Massachusetts law.

**Thirteenth Affirmative Defense**

None of the defendants' actions are wilful violations of 29 U.S.C. § 201-*et seq.*

**Fourteenth Affirmative Defense**

The plaintiff's claims are barred by the applicable statute of limitations.

WHEREFORE, the defendants demand that:

1. Judgment be entered against the plaintiff and in their favor.
2. This Court grant such other and further relief as it deems just and meet.

Respectfully submitted,

LE INC., ET AL

By their attorneys,

/s/ Paul L. Nevins  
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**Certificate of Service**

The undersigned hereby certifies that, on October 27, 2004, served a true copy of the foregoing upon all parties by causing it to be sent, via first class mail, postage prepaid, to:

John S. Casler, Esquire  
Deputy Regional Solicitor  
**U.S. Department of Labor**  
**Office of The Solicitor**  
JFK Federal Building, Room E-375  
Boston, MA 02203

/S/  
Philip R. Olenick